



**The Comptroller General
of the United States**

Washington, D.C. 20548

Decision

Matter of: Ledco, Inc.
File: B-226585
Date: March 30, 1987

DIGEST

When a protest alleging solicitation improprieties is filed initially with the contracting agency before the bid opening date, a subsequent protest to GAO before bid opening is untimely when filed more than 10 days after the protester receives notice of the initial adverse agency action on the protest.

DECISION

Ledco, Inc. protests the evaluation differential clause under solicitation No. M67004-87-0058, issued by United States Marine Corps. Ledco raised the same issue in a protest to the agency, which denied the protest, after which Ledco filed its protest in our Office.

We dismiss the protest as untimely.

When Ledco received the solicitation, it protested to the contracting officer that the evaluation differential clause for equal products under this brand name or equal solicitation imposed an excessive charge of \$4,122, which Ledco alleged effectively eliminated competition. Bid opening was scheduled for March 27, 1987. By letter dated March 3, which Ledco acknowledges having received on March 9, the Marine Corps contracting officer denied Ledco's protest on the basis that the differential charge properly reflected the cost to the Marine Corps of introducing a new model into its supply system. Ledco filed a protest in our Office on March 24, raising the identical protest grounds.

Under our Bid Protest Regulations, in cases such as this, where an alleged impropriety in a solicitation is timely protested to a contracting agency, any subsequent protest to our Office must be filed within 10 days of formal notifica-

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tion of or actual or constructive knowledge of initial adverse agency action. 4 C.F.R. § 21.2(a)(3) (1986). Since Ledco's protest to our Office was not filed within 10 days of its receipt of the Marine Corps' protest denial, it is untimely and will not be considered. Our decisions require that to be considered timely, a protest must be filed with our Office within 10 working days of initial adverse agency action even though the bid opening date is more than 10 working days from such action. Pacific Northwest Bell Telephone Co., B-219282.2, 85-2 C.P.D. ¶ 99; Informatics, Inc., 58 Comp. Gen. 750 (1979), 79-2 C.P.D. ¶ 159.

The protest is dismissed.



Robert M. Strong
Deputy Associate General Counsel